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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/299,684	04/26/1999	NINA T. BHATTI	10982229-1	3580

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HEWLETT PACKARD COMPANY  
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INTELLECTUAL PROPERTY ADMINISTRATION  
FORT COLLINS, CO 80527-2400

EXAMINER
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BIAGINI, CHRISTOPHER D

ART UNIT	PAPER NUMBER
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2142

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/27/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 09/299,684	Applicant(s) BHATTI ET AL.	
	Examiner Christopher D. Biagini	Art Unit 2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 9-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 9 contains the phrase "wherein said determining of said load condition of said content server measures an amount of time," which is grammatically ambiguous. It is unclear whether the step of determining is intended to *comprise* measuring or *consist of* measuring. For the purposes of this examination, the phrase will be interpreted to read "wherein said determining of said load condition of said content server *comprises* measuring an amount of time."
4. Any claim not specifically addressed above is rejected as incorporating the deficiencies of a claim upon which it depends.

### ***Claim Rejections - 35 USC § 103***

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mogul et al. (US Pat. No. 6,243,761, hereinafter "Mogul") in view of Abbott et al. (US Pat. No. 6,314,463, hereinafter "Abbott").

8. Regarding claims 1 and 9, Mogul teaches a computer network that varies the quality of data transmitted. Mogul teaches a content server that stores files for external access (col. 5, lines 5-8), storing or creating data files that are less resource intensive (col. 5, lines 46-57 and col. 2, lines 19-23) that are stored in a full content and adapted content form (col. 5, lines 58-67 and col. 2, lines 4-8). Mogul further teaches an adaptive load control system to pass requests to the server (col. 5, lines 46-59), modifying an access request (col. 5, lines 40-57 and col. 7, lines 26-28) and/or modifying an access

request address (col. 2, lines 4-18) to instead obtain an adapted content by legacy addresses or dynamically as "by automatically varying the layout of 'content' in response to recent information about network conditions" (col. 9, lines 57-58), and when the server is overloaded as "the effective bandwidth can also depend on server loads" (col. 9, lines 52-53), "download time" (col. 9, line 63), and "monitoring includes measuring the server load of the server" (col. 10, lines 53-54). Mogul further teaches monitoring the response time of the server (col. 10, lines 49-50).

9. Mogul does not teach a load monitor that monitors the load condition of the content server without requiring monitoring of the network, said load monitor establishing the load condition of said content server by measuring an amount of time between when the content server receives the external access request and when the content server provides the external access request.

10. Abbott teaches a load monitor (web server interface 104) that monitors and determines the load condition of a content server (web server 102) without requiring monitoring of the network (note that web server 102 provides timing information to web server interface 104 directly at the beginning and end of processing, so web server interface 104 has no need to monitor the network: see col. 15, lines 7-13), said load monitor establishing the load condition of said content server by measuring an amount of time between when the content server receives an external access request and when the content server provides the external access request (see col. 10, line 65 to col. 11, line 3; col. 10, lines 44-47; and col. 15, lines 7-13). It would have been obvious to one of ordinary skill in the art to modify the invention of Mogul with the load monitoring system

taught by Abbott in order to measure server response time without the measurement being skewed by varying network performance (see Abbott, col. 1, line 66 to col. 2, line 5).

11. Regarding claims 2 and 10, the combination of Mogul and Abbott teaches the limitations of claims 1 and 9 as applied above, and further teaches transmitting full content when the server is not overloaded (see Mogul, col. 5, lines 58-61 and col. 6, lines 33 and 42).

12. Regarding claims 3, 11, and 15, the combination of Mogul and Abbott teaches the limitations of claims 1 and 9 as applied above, and further teaches determining load condition within the content server (see element 200 in Fig. 1 of Mogul) and transmitting adapted content when the server is overloaded (see Mogul, col. 5, lines 62-64 and col. 6, lines 33 and 42).

13. Regarding claim 4, the combination of Mogul and Abbott teaches the limitations of claim 3 as applied above, and further teaches adapting the content based on the load (Mogul, col. 7, lines 34-37) dynamically, or providing an address to the dynamically generated content (Mogul, col. 2, lines 4-18).

14. Regarding claim 5, the combination of Mogul and Abbott teaches the limitations of claim 4 as applied above, and further teaches a predetermined load value of the

server to compare to determine if the server is overloaded, as based on the load limits, the download time can be adjusted, since load values are directly related to download time (see Mogul, col. 7, lines 48-52 and/or "threshold," col. 6, line 37).

15. Regarding claim 6, the combination of Mogul and Abbot teaches the limitations of claim 3 as applied above, and further teaches instead transmitting full content when the server is not overloaded (see Mogul, col. 5, lines 58-61 and col. 6, lines 33 and 42).

16. Regarding claims 7 and 12, the combination of Mogul and Abbot teaches the limitations of claims 1 and 9 as applied above, and further teaches modifying a URL access request for content (see Mogul, col. 2, lines 10-19 and col. 9, line 41).

17. Regarding claim 8, the combination of Mogul in view of Abbot teaches the limitations of claim 1 as applied above, and further teaches that the server includes a service directory or index or library or database that directs the access request to the corresponding "annotated page" or format (see Mogul, col. 9, lines 38-39).

### ***Response to Amendment***

18. Applicant's arguments have been considered but are moot in view of the new grounds for rejection. The broad claim language used is interpreted on its face and based on this interpretation the claims have been rejected.

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19. The limited structure claimed, without more functional language, reads on the references provided. Thus, Applicant's arguments cannot be held as persuasive regarding patentability.

### ***Conclusion***

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

21. Ramanathan et al. (US Pat. No. 6,041,041) shows a monitoring a load condition of a content server by measuring an amount of time required to respond to a request. See col. 9, lines 51-54.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Biagini whose telephone number is (571) 272-9743. The examiner can normally be reached on M-R 7:30-5, 7:30-4 alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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April 17, 2007